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SABAH STATE ATTORNEY GENERAL'S CHAMBERS v. MESSRS ROLAND CHENG & CO & ANOR

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
CELESTINA STUEL GALID JC
[ORIGINATING SUMMONS NO: BKI-24-75-9-2018]
6 MARCH 2019

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CIVIL PROCEDURE: *Locus standi – Action – Interpleader – Claim for title deeds pursuant to court order in earlier civil suit – Notice of change of solicitors by first respondent – Whether first respondent still on record – Whether there was evidence of appointment of another solicitor to take over from first respondent – Whether authority of first respondent rebutted – Whether first respondent entitled to have title deeds released to them – Rules of Court 2012, O. 17*

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The plaintiffs in a civil suit ('Suit 62') sued the defendants, Chua Yung Kim ('first defendant') and three others. The applicant represented the Penolong Pemungut Hasil Tanah Beluran, Sabah, the Pengarah Tanah & Ukur, Sabah and Kerajaan Negeri Sabah, who were the second, third and fourth defendants in the suit. By a letter dated 30 March 2010, the applicant gave an undertaking to the High Court in Suit 62 that the second, third and fourth defendants therein, *inter alia*, should comply with any judgment that the High Court may give in the claim between the plaintiffs and the first defendant subject to the provisions of the Land Ordinance (Sabah) (Cap 68) ('letter of undertaking'). The High Court in Suit 62 found in favour of the plaintiffs and, *inter alia*, ordered that 'within 7 days of this order the first defendant deliver up the issued document of title in respect of each of the lands as per Annexure A to the plaintiffs' solicitors, Messrs Alex Pang & Co'. On 26 June 2012, the 98 title deeds were handed over to Messrs Alex Pang & Co as solicitors for the plaintiffs and were thereafter delivered to the applicant pending the disposal of the first defendant's appeal. The Court of Appeal ordered that Messrs Alex Pang & Co be disqualified from acting for the plaintiffs on the ground of conflict of interest. The first respondent filed a notice of change of solicitors and pursuant thereto, acted for the plaintiffs in the Court of Appeal and the Federal Court. The first defendant's appeal was dismissed by the Court of Appeal and the application for leave to appeal to the Federal Court was also dismissed. By various letters sent to the applicant, the second respondent informed the applicant that they had been appointed by one Haidin bin Osman ('Haidin') to act on behalf of some of the plaintiffs and in connection therewith, forwarded to the applicant, copies of notice of discontinuance, notices to act in person, letters of administration, a copy of the revocation of power of attorney granted to the first plaintiff and letters of undertaking and indemnity to the second, third and fourth defendants. On the other hand, the first respondent wrote to the applicant that they wished

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to exercise a solicitors' lien on the title deeds for the legal fees payable to them by the plaintiffs and requested for the release of the title deeds to them instead. The first defendant's solicitors had also written to the applicant that, as the plaintiffs had discontinued their action against him, the first defendant was entitled to request for the return of the title deeds. The applicant subsequently released 62 of the 98 title deeds to the plaintiffs who had filed the notices of discontinuance and the other 36 title deeds remained in the applicant's custody. The applicant had thereafter caused collector's caveats to be entered against the said 62 title deeds stating that it was a 'precautionary measure' due to the adverse claims by the first and second respondents. The interpleader application herein was filed by the applicant pursuant to O. 17 and/or O. 92 r. 4 of the Rules of Court 2012 ('ROC') for an order that the first and second respondents appear and state the *locus standi* of their respective claims to the 98 original title deeds on behalf of their clients and maintain or relinquish the same and abide by such order and directions as the court may make. A preliminary issue was raised as to whether the 62 title deeds which had already been released could form part of the subject matter of the application.

Held (order accordingly):

(1) Having released the 62 title deeds to the relevant plaintiffs through the second respondent, the applicant could not be said to be still subjected to competing claims on the said 62 title deeds. There was nothing more for this court to decide save for the remaining 36 title deeds. In so deciding, the court had regard to the requirement under O. 17 r. 3(2)(c) of the ROC for an applicant to state that he was willing to transfer the subject matter into the court or to dispose of it as the court may direct. The applicant could not be said to be in any position to comply with this requirement as far as the 62 title deeds were concerned. (paras 19 & 20)

(2) Order 21 r. 2 of the ROC provides that a plaintiff may discontinue his action without leave of the court at any time not later than 14 days after the service of the defence on him. Thereafter, leave of the court will have to be sought under O. 21 r. 3 of the ROC. Apart from the fact that the said notices were purportedly filed after the High Court judgment was obtained, there was no evidence that they were filed with the leave of the High Court. There was also no evidence that the relevant plaintiffs had filed similar notices of discontinuance and/or notices to act in person in the Court of Appeal. Thus, the notices of discontinuance and notices to act in person did not have any effect on the standing of the first respondent. The first respondent was still on record as solicitors for the plaintiffs, and thus, was entitled to have the title deeds delivered to them by the applicant. (paras 26-28)

(3) There was no evidence of any plaintiffs appointing the second respondent to act on their behalf and hence, no evidence of the second respondent having taken over the conduct of the matter from the first respondent. Therefore, the averments by the first respondent that they had the authority to act on behalf of all the 98 plaintiffs, including to collect the title deeds from the applicant were not rebutted and deemed admitted. (paras 31 & 34)

(4) The letter of undertaking by the applicant to the High Court expressly provided that they shall comply with any judgment that the High Court may give in the claim between the plaintiffs and the first defendant. With the dismissal of the first defendant's appeal by the Court of Appeal and the refusal of leave to appeal by the Federal Court, the parties, including the applicant, was bound to comply with the terms of the High Court judgment, including for the delivery of the title deeds to the plaintiffs' solicitors. Therefore, the first respondent, as the plaintiffs' solicitors were entitled to have the 36 title deeds to be released to them. (paras 38-40)

Case(s) referred to:
Majlis Peguam Malaysia & Ors v. Raja Segaran S Krishnan [2002] 3 CLJ 370 CA ***(refd)***
Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***
Tetuan Teh Kim Teh, Salina & Co v. Tan Kau Tiah & Anor [2013] 5 CLJ 161 FC ***(refd)***

Legislation referred to:
Rules of Court 2012, O. 17 rr. 1, 3(2)(c), 5(1), (2), O. 21 r. 3, O. 92 r. 4

For the applicant - Chee Chun Yen; State Counsel, Sabah
For the 1st respondent - Roland Cheng; M/s Roland Cheng & Co
For the 2nd respondent - Afizal Aldin; M/s Umar Muhamad & Co

Reported by S Barathi

JUDGMENT

Celestina Stuel Galid JC:

Introduction

[1] The applicant filed an interpleader application pursuant to O. 17 and/or O. 92 r. 4 of the Rules of Court 2012 ("ROC 2012") for the following orders (*verbatim*):

(i) The abovementioned first and second respondents appear and state the *locus standi* of their respective claims to the 98 original title deeds on behalf of their clients and maintain or relinquish the same and abide by such order and directions as this Honourable Court may make herein;

(ii) Costs; and

(iii) Any further order or relief that this Honourable Court deems fit and just.

Background Facts

[2] The following background facts, *inter alia*, form the basis of this application.

[3] The plaintiffs in the Civil Suit No: S21-62 of 2009 ("Suit 62") ie, Madlis Azid @ Aziz & 97 others ("the plaintiffs") sued the defendants, Chua Yung Kim (hereinafter referred to as "the first defendant") and three others.

[4] The applicant represented the Penolong Pemungut Hasil Tanah Beluran, Sabah, the Pengarah Tanah & Ukur, Sabah and Kerajaan Negeri Sabah, who were the second, third and fourth defendants in Suit 62.

[5] By a letter dated 30 March 2010, the applicant gave an undertaking to the High Court in Suit 62 that the second, third and fourth defendants therein "shall comply with any judgment of the High Court may give in the claim between the plaintiffs and the first defendant subject to the provisions of the Land Ordinance (Sabah Cap. 68)" ("the letter of undertaking"). It was further stated that "A sealed copy of the said judgment has to be served on us".

[6] On 23 December 2011, the High Court in Suit 62 found in favour of the plaintiffs and, *inter alia*, ordered that:

> (5) That within 7 days of this order the 1st defendant deliver up the issued document of title in respect of each of the lands as per Annexure A to the plaintiffs' solicitors Messrs Alex Pang & Co.

[7] On 26 June 2012, the 98 title deeds were handed over to Messrs. Alex Pang & Co as solicitors for the plaintiffs. Thereafter, the title deeds were delivered to the applicant pending the disposal of the first defendant's appeal.

[8] The first defendant appealed to the Court of Appeal. On 18 March 2013, the Court of Appeal ordered that Messrs. Alex Pang & Co be disqualified from acting for the plaintiffs on the ground of conflict. The first respondent had thereafter filed a notice of change of solicitors dated 15 July 2013 and pursuant thereto, they had acted for the plaintiffs in the Court of Appeal and the Federal Court.

[9] On 9 November 2017, the first defendant's appeal was dismissed by the Court of Appeal.

[10] The first defendant applied for leave to appeal to the Federal Court. The application was dismissed on 13 April 2018.

[11] By various letters sent to the applicant, the second respondent informed the applicant that they had been appointed by one Haidin bin Osman ("Haidin") to act on behalf of some of the plaintiffs and in connection therewith, forwarded to the applicant, copies of notice of discontinuance,

notices to act in person, letters of administration, a copy of the revocation of power of attorney granted to the first plaintiff and letters of undertaking and indemnity to the second, third and fourth defendants.

[12] The first respondent on their part also wrote to the applicant requesting that they do not release the title deeds as the first respondent wished to exercise a solicitors' lien on the title deeds for the legal fees payable to them by the plaintiffs. The first respondent also requested for the release of the title deeds to them instead.

[13] The first defendant's solicitors had also written to the applicant that as the plaintiffs have discontinued their action against him, the first defendant was entitled to request for the return of the title deeds.

[14] The applicant subsequently released 62 of the 98 title deeds to the plaintiffs who had filed the notices of discontinuance. The other 36 title deeds remained in the custody of the applicant. The applicant had thereafter caused collector's caveats to be entered against the said 62 title deeds stating that it was a "precautionary measure" due to the adverse claims by the first and second respondents.

[15] The applicant filed this application stating that there was a question as to the *locus standi* of the first respondent and the second respondent in receiving the title deeds, which question has to be decided by the court.

Preliminary Issue

[16] Prayer 1 of the originating summons required the first and second respondents to appear and state their *locus standi* in respect of the 98 original title deeds. However, as at the date of this application, the applicant only held 36 of the title deeds as they had already released the rest to the plaintiffs *albeit* having subsequently caused collector's caveats to be entered against the 62 title deeds.

[17] A preliminary issue arising thereof was whether the 62 title deeds which had already been released can form as part of the subject matter of this application.

[18] It is provided under O. 17 r. 1 of the ROC 2012 that:

> (1) Where:
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> (a) A person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or

(b) A claim is made to any money, goods or chattels taken or intended to be taken by the Sheriff in execution under any process or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

the person under liability or, subject to rule 2, the Sheriff may apply to the Court for relief by way of interpleader.

[19] In my view, having released the 62 title deeds to the relevant plaintiffs through the second respondent, the applicant cannot be said to be still subjected to competing claims on the said 62 title deeds. There was nothing more for this court to decide save for the remaining 36 title deeds.

[20] In deciding so, I also had regard to the requirement under O. 17 r. 3(2)(c) of the ROC 2012 for an applicant to state that he was willing to transfer the subject matter into court or to dispose of it as the court may direct. The applicant herein cannot be said to be in any position to comply with this requirement in as far as the 62 title deeds were concerned.

This Court's Decision

[21] At the outset, it is noted that the second respondent's affidavit filed in respect of this application (encl. 6) only expressly relate to the 62 title deeds which already have been released to them. This is evident in paras. 5 and 6 of the said affidavit and reproduced below:

5. The 2nd Respondent verily believe that based on all the documents exhibited by the Applicant, the 2nd Respondent is and was at all material time the rightfully Solicitors and have the *locus standi* to represent the 62 Plaintiffs who have discharged Messrs, Roland Cheng & Co. In relation thereto, the 2nd Respondent would be relying on the documents exhibited by the Applicant in their Application therein.

6. Further, the release of Titles by the Applicant to the 62 Plaintiffs through the 2nd Respondent indicates that the 2nd Respondent is and was at all material time the rightfully Solicitors appointed by the 62 Plaintiffs.

[22] As can be seen above, the second respondent had not made any averments to claim the 36 remaining title deeds with the applicant. As such, and as this court had already found that the 62 title deeds did not form the subject matter of this application, there was, in fact, no competing claim in respect of the 36 title deeds, only the first respondent's.

[23] In any event, I found that the second respondent did not have *locus standi* to claim for the 36 title deeds for the reasons set out below.

The Appointment Of The First And Second Respondents

[24] As noted above, the first respondent had acted for the plaintiffs in the Court of Appeal and the Federal Court pursuant to the notice of change of solicitors dated 15 July 2013, having taken over from the plaintiffs' previous solicitors, Messrs. Alex Pang & Co. I did not find any evidence that the first respondent had discharged themselves as solicitors for the plaintiffs or that any of the plaintiffs had properly discharged the first respondent.

[25] The applicant and the second respondent have both alluded to the notices of discontinuance and the notices to act in person dated 20 October 2014 and 10 November 2014 (exh. "MH11") filed by some of the plaintiffs in Suit 62. Clearly, the said notices were intended to dispute the standing of the first respondent in acting for the said plaintiffs. However, it will be remembered that the judgment of the High Court in Suit 62 was on 23 November 2011 ie, some three years before the purported notices of discontinuance and notices to act in person were filed.

[26] Order 21 r. 2 of the ROC 2012 provides that a plaintiff may discontinue his action without leave of the court at any time not later than 14 days after the service of the defence on him. Thereafter leave of the court will have to be sought under O. 21 r. 3 of the ROC 2012, for which an application will have to be made. Also, it is not always the case that the court will grant the application for leave to discontinue an action in all circumstances but the court will have regard to the facts and circumstances of the case – see *Majlis Peguam Malaysia & Ors v. Raja Segaran S Krishnan* [2002] 3 CLJ 370; [2002] 3 MLJ 155.

[27] In the present case, apart from the fact that the said notices were purportedly filed after the High Court judgment was obtained, there was no evidence that they were filed with the leave of the High Court. Further, there was also no evidence that the relevant plaintiffs had filed similar notices of discontinuance and/or notices to act in person in the Court of Appeal.

[28] Thus, I agree with the submission by learned counsel for the first respondent that the notices of discontinuance and notices to act in person dated 20 October 2014 and 10 November 2014 did not have any effect on the standing of the first respondent. For all intents and purposes, the first respondent was still on record as solicitors for the plaintiffs and thus, was entitled to have the title deeds delivered to them by the applicant in accordance with item 5 of the judgment dated 23 December 2011.

[29] As for the second respondent, they had only expressly stated that they were acting for the 62 plaintiffs who had filed the notices of discontinuance and notices to act in person – see [21] above. In addition, the second respondent was in actual fact, appointed by Haidin who in turned was

purportedly appointed by the 62 plaintiffs. This is evident in the letter dated 25 March 2015 from the second respondent to the applicant enclosing letter of appointment of Haidin by the said plaintiffs.

[30] A sample of the letter of appointment to Haidin reads:

> BAHAWA, Saya Penama/Plaintif dibawah dalam Kes Suit No S 21-62 of 2009 dengan ini melantik EN HAIDIN BIN OSMAN (KP 640617-12-5299) yang beralamat di lorong Sendang 5, Blok 156, Lot 1778 C, Taman Mawar, Jalan Sibuga, 90000 SANDAKAN untuk bertindak bagi pihak saya seperti berikut:
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> 1. Menguruskan tuntutan dan/atau merundingkan semula terma dan syarat perjanjian dengan pihak pembeli lot tanah saya yang telah terletak di Sungai Sugut, Beluran.
>
> 2. Menguruskan (jika perlu) pembatalan/penarikan diri saya sebagai Plaintif dalam Suit No. S 21-62 of 2009.
>
> Tarikh 19 haribulan Oktober 2014
>
> Ditandatangani Oleh
>
> _____
> Zitra @ Kulang binti Abdul Aziz
> (NRIC NO. 410704-12-5146/H0090476)
> Plaintif No. 11

[31] There was no evidence of any of the plaintiffs having appointed the second respondent to act on their behalf. The only letter that was exhibited by the applicant and relied on by the second respondent was the letter dated 16 February 2015 from Haidin to the second respondent (exh. "MH11") stating that he (Haidin) had been appointed by the 36 of the plaintiffs to negotiate on the new terms and additional compensation to be paid by the first defendant. In short, there was no evidence of the second respondent having taken over the conduct of the matter from the first respondent.

[32] If it was not yet clear from the above as to the standing of the first respondent, the first respondent had also exhibited in this application, letters dated 4 June 2018 from all the 98 plaintiffs to the first respondent stating, *inter alia*, that they have appointed the first respondent to act on their behalf including to collect the title deeds from the applicant (see exh. "M1").

[33] I found it significant that although subsequent to the filing of first respondent's affidavit exhibiting "M1" (encl. 5), the second respondent had filed their affidavit affirmed on 24 September 2018 (encl. 6) but no averments were made to rebut the contents of the letters by the 98 plaintiffs authorising the second respondent to collect the title deeds from the applicant.

[34] Thus, the averments by the first respondent that they had as at 4 June 2018, the authority to act on behalf of all the 98 plaintiffs including to collect the title deeds from the applicant were unrebutted and deemed admitted – *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609; [1995] 1 MLJ 281.

[35] In submission, learned counsel for the second respondent also contended that administrators of the estate of 14 of the plaintiffs have appointed the second respondent to act on their behalf to collect 14 of the title deeds from the applicant. Reference was made to a letter dated 9 July 2018 from the second respondent to the applicant purportedly enclosing copies of Jadual Tiga (letters of administration) issued by the Mahkamah Anak Negeri Beluran (exh. "MH22"). However, none of the alleged attachments to the said letter was exhibited and no evidence was led to support the learned counsel's contention that the 14 plaintiffs have passed away. Furthermore, even if there was truth in the assertion that the 14 plaintiffs have since passed away, the second respondent had not produced any evidence that the administrators of the alleged deceased 14 plaintiffs have appointed them to act on their behalf.

[36] In the upshot, I did not find any evidence to support the second respondent's contention that they had *locus standi* to collect the title deeds for and on behalf of the plaintiffs in place of the first respondent who was on record to have acted for the plaintiffs pursuant to the notice of change of solicitors dated 15 July 2013.

[37] In so deciding, I have had regard to O. 17 r. 5(1) and (2) of the ROC 2012 and came to the conclusion that based on the affidavit evidence and the exhibits annexed thereto, this court was able to determine the issue of the *locus standi* of the first and second respondents summarily without the necessity of a full trial. See *Tetuan Teh Kim Teh, Salina & Co v. Tan Kau Tiah & Anor* [2013] 5 CLJ 161; [2013] 4 MLJ 313, where the Federal Court referred to the guidelines provided by the *Malaysian Rules of Court 2012, An Annotation*, by Lexis Nexis on O. 17 r. 5 of the Rules of Court 2012 as follows:

> At the hearing of the originating summons or notice of application, the court is entitled to make one of the following alternative orders:
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> (1) Dismiss the originating summons or notice of application if rr. 1 and 3 are not satisfied;
>
> (2) Decide the merits of the application summarily (r. 5(2)). By 'summarily', it is not meant that the court can determine the question immediately out of hand but that the court can determine it without directing an issue: *Re Tarn* [1893] 2 Ch 280. Summary disposal is commonly adopted in clear and straightforward cases, for example, where

expedition is desirable in cases where goods are likely to deteriorate if proceedings are delayed. Where the goods are of considerable value and there are difficult questions of law, summary disposal of the matter will be inappropriate: *Fredericks and Pelhams Timber Buildings v. Wilkins (Read, Claimant)* [1971] 3 All ER 545; [1971] 1 WLR 1197, (Eng). The usual practice at summary hearing will be for the court to give a special appointment at which evidence can be taken orally and the witnesses cross-examined and the relevant documents produced: *PBJ Davis Manufacturing Co v. Fahn, etc* [1967] 2 All ER 1274; [1967] 1 WLR 1059.

[38] The letter of undertaking by the applicant to the High Court expressly provides that they shall comply with any judgment of the High Court may give in the claim between the plaintiffs and the first defendant.

[39] With the dismissal of the first defendant's appeal in the Court of Appeal and refusal of leave to appeal by the Federal Court, the parties, including the applicant (by virtue of the letter of undertaking) was bound to comply with the terms of the High Court judgment dated 23 December 2011 including for the delivery of the title deeds to the plaintiffs' solicitors.

Conclusion

[40] Having regard to all of the above, I therefore held that the first respondent, as the plaintiffs' solicitors were entitled to have the 36 title deeds be released to them and ordered accordingly. I also made no order as to costs.